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Digging for Lincoln's Assassin Booth Descendants Ask CSA to Overturn Bar on Excavating Remains The Daily Record (Baltimore, MD.) May 9, 1996, Thursday

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HEADLINE: Digging for Lincoln's Assassin Booth Descendants Ask CSA to Overturn Bar on Excavating Remains

BYLINE: By Gregory C. Baumann; Daily Record Opinions Editor

BODY:

Distant descendants of presidential assassin John Wilkes Booth yesterday argued that a trial judge erred by refusing to let them dig up the grave thought to contain the body of their infamous forbearer.

Representatives of Green Mount Cemetery opposed the appeal, saying the Booth family plot holds Booth's remains -- not a mystery corpse allegedly planted there to cover up the fact Union troops never caught Abraham Lincoln's killer.

"There's no reason for exhumation," Green Mount lawyer Francis J. Gorman, of Baltimore's Gorman & Williams, told the Court of Special Appeals. "This case is a hoax."

Lois Rathbun of Rhode Island, Booth's great-great-niece, characterized the fight as one between Booth's kin and interlopers -- namely the cemetery administrators fighting the exhumation.

"I think that as relatives, even if we're 127 years removed, my family purchased the plot. We should have the right to know who is in the family plot," Rathbun said.

Yesterday's argument in the appeals court focused on whether Baltimore Circuit Court Judge Joseph H. H. Kaplan was correct in refusing the Booth descendants' initial request to search the cemetery.

The court did not indicate when it would rule on the appeal.

Booth family lawyer Mark S. Zaid said "[T]he basis of our historical case is there is a historical controversy that demands resolution. . . . The identification of Booth [at his time of death] was equivocal and there was a doubt." Standard history teaches Booth was shot by Union troops in Bowling Green, Va., 12 days after he killed Lincoln in Ford's theater. His body was badly burned in a barn fire sparked by the shoot out.

Revisionists claim Booth eluded capture and lived 38 years after the 1865 assassination, finally killing himself in Enid, Okla. They dispute assertions that up to 18 people positively identified the assassin's corpse after his death.

Kaplan found those arguments unconvincing in the May proceedings in the Baltimore City Circuit Court.

"[T]he unreliability of the petitioners' less-than-convincing escape/cover up theory, gives rise to the conclusion that there is no compelling reason for an exhumation," Kaplan wrote in his ruling.

He found Booth family lawyers did not produce "substantial, compelling or valid" reasons to exhume the body.

The three appellate court judges hearing yesterday's appeal questioned Zaid repeatedly as to the need for an exhumation.

Judge James S. Getty pointed to testimony adduced at the Baltimore trial indicating that even if the grave is exhumed, the lack of dental records or direct matrilineal descendants for DNA comparison of the remains would render any identification uncertain.

Zaid said state-of-the-art computer imaging technology could provide reliable results.

Chief Judge **Alan M. Wilner** challenged Zaid's attempt to disqualify Green Mount representatives from opposing the exhumation.

"In this case why is it if the cemetery doesn't oppose the exhumation, no one can?" Wilner asked. "Booth's mother and brother said, 'This is where we want him buried.'"

Zaid responded that the distant descendant's interest in the identity of the corpse in the unmarked Booth family grave outweighed that of the cemetery.

After the argument, Zaid declined to forecast how the court would rule on the Booth family's appeal, but said that if the family lost, history would be the real loser.

"The strongest evidence in favor of exhumation is that history is still recording." You have the new Encyclopedia Britannica's entry on Booth ending, 'because identification was equivocal, some people doubted the man was actually Booth.'

"The main historical reason for the suit is that there's this controversy, whether you believe Booth escaped or not," Zaid said.

Gorman said the search for Booth's body could end up disturbing up to 11 bodies.

The Booth family concedes that even if the grave site they believe to contain Booth's corpse - or its surrogate -- is dug up, it will require the disinterment of three infant siblings resting on top of the body's coffin.

In recent years, a handful of history buffs and forensic scientists have dug up the remains of controversial historical figures to put to rest doubt as to their true fates.

Those exhumations have focused on Lee Harvey Oswald, cannibal Alferd Packer and Lizzie Borden.

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